it is submitted that, apart from special facts, effect may properly be given to a transaction which, without materially impairing the state's assurance for the prisoner's appearance, lightens the burden of the criminal bail.[19]

RECENT CASES.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — LIABILITY OF MEMBERSHIP CORPORATION FOR FRAUDULENT ISSUES OF STOCK CERTIFICATES. — The defendant was a membership corporation empowered to issue certificates of indebtedness in the form of stock certificates and whose shares were transferable only on the books of the company upon surrender of the certificate representing them. The treasurer of the company fraudulently issued to himself spurious certificates, constituting an over-issue and with no corresponding shares on the books. The plaintiff loaned money on these spurious certificates and sued the defendant for the damages occasioned thereby. *Held*, that the defendant is not liable. *American, etc., Bank* v. *Woodlawn Cemetery*, 87 N. E. 107 (N. Y., Ct. App.). See NOTES, p. 526.

AGENCY — UNDISCLOSED PRINCIPAL — ELECTION TO SUE EITHER AGENT OR PRINCIPAL. — The plaintiff contracted with the agent of an undisclosed principal. After disclosure he sued the principal to judgment; but not obtaining satisfaction, he then sued the agent. *Held*, that suing the principal to judgment constitutes a conclusive election which discharges the agent. *Murphy* v. *Hutchinson*, 48 So. 178 (Miss.).

One who contracts with the agent of an undisclosed principal may sue either the agent or the principal. *Paterson* v. *Gandasequi*, 15 East 62. Nothing short of suing to judgment seems to constitute an election. *Cobb* v. *Knapp*, 71 N. Y. 348. See *Curtis* v. *Williamson*, L. R. 10 Q. B. 57. And it has even been held that satisfaction of a judgment against one is necessary to discharge the other. *Beymer* v. *Bonsall*, 79 Pa. St. 298. *Contra, Priestly* v. *Fernie*, 3 H. & C. 977. It has been suggested that there is no doctrine of election, but that the cause of action becomes merged in judgment secured against either. See 14 HARV. L. REV. 68. *Cf. Jansen* v. *Grimshaw*, 125 Ill. 468. But if the principal remains undisclosed when judgment is entered against the agent, the principal is not discharged. *Greenburg* v. *Palmieri*, 71 N. J. L. 83; *Remmel* v. *Townsend*, 31 N. Y. Supp. 985. This result, though inconsistent with the theory of merger, is desirable; for the same considerations of fairness that gave rise to this right to elect sustain its continuance until it has been consciously exercised, or satisfaction received. The doctrine of election thus seems to be the more satisfactory doctrine. The rule that only a judgment secured with knowledge of all the facts constitutes an election is often applied in analogous cases where one has an election of remedies. See *Moore* v. *Sanford*, 151 Mass. 285; *Garrett* v. *Farewell*, 199 Ill. 436.

ALIENS — NECESSITY OF RESIDENCE FOR NATURALIZATION BY MARRIAGE. — A resident alien sought naturalization papers. At the time of his application, his wife, who had never been a resident in this country, was detained by the immigration authorities because of a contagious disease. The petition for naturalization was opposed on the ground that by virtue of the act providing that "Any woman who is now, or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen" (U. S. Comp. St. (1901), p. 1268, § 1994), the naturalization of the husband would secure the admission of his wife. *Held*, that as the act of Congress is not to be construed as applying to non-resident aliens, the natu-

[19] *Cf.* Belond *v.* Guy, 20 Wash. 160.

ralization of the husband would not confer citizenship on the wife. *In re Rustigian*, 165 Fed. 980 (C. C., D. R. I.).

At common law an alien woman acquired no rights of citizenship by marriage with a citizen. *Count de Wall's Case*, 6 Moore P. C. 216. However, by the above statute passed by Congress the status of marriage with a citizen invests an alien woman with citizenship. *Dorsey* v. *Brigham*, 177 Ill. 250. And it makes no difference that the husband acquires his citizenship after the marriage. *Kelly* v. *Owen*, 7 Wall. (U. S.) 496. Naturalization by marriage secures as complete citizenship as that acquired by judicial proceedings. *Leonard* v. *Grant*, 5 Fed. 11. And the usual statutory requirements of age, education, and moral character are dispensed with. *Renner* v. *Mueller*, 57 How. Pr. (N. Y.) 229. Moreover, the courts have uniformly held that residence in this country is not essential. *Kane* v. *McCarthy*, 63 N. C. 299; *Ware* v. *Wisner*, 50 Fed. 310. But the State Department, to avoid conflicts in international law, has disregarded these decisions. 3 MOORE, INT. LAW DIG. 485–487. In the single previous case in which any question as to the immigration laws arose, a marriage during detention removed the cause for exclusion under such laws in addition to conferring citizenship. *Hopkins* v. *Fachant*, 130 Fed. 839. The difficulty presented in the main case is therefore a new one. That the act should be so construed as to admit persons otherwise excluded by the immigration laws seems unreasonable. Hence the interpretation that residence is necessary reaches the better result. Cf. *Zartarian* v. *Billings*, 204 U. S. 170.

ANIMALS — TRESPASS ON REALTY BY ANIMALS — LIABILITY OF OWNER. — A's bull wandered from his land on to B's, and there injured C, a licensee. A had no knowledge of the vicious propensities of the bull, and it was not proved that he was guilty of negligence. C sought to recover on the ground that the bull was a trespasser, and that therefore the owner was absolutely liable for any injury irrespective of negligence. *Held*, that C is not entitled to to recover. *Peterson* v. *Conlan*, 119 N. W. 367 (N. D.).

At common law the owner of cattle was bound at his peril to keep them from trespassing upon the land of another. *Bileu* v. *Paisley*, 18 Ore. 47. And with those states excepted which hold that the common law is inapplicable to their conditions, all jurisdictions agree that the owner is liable for the natural and probable results of the trespass irrespective of negligence. *Pace* v. *Potter*, 85 Tex. 473; *Lyons* v. *Merrick*, 105 Mass. 71. But there is a conflict of authority as to whether the owner of cattle ignorant of their vicious disposition is liable for injury to the property or person of the landowner that could not have been anticipated. Those jurisdictions imposing an absolute liability proceed upon the theory that damages for the special injury may be recovered as aggravated damages growing out of the primary trespass. And this right has been extended to a licensee. *Troth* v. *Wills*, 8 Pa. Sup. Ct. Rep. 1. This extension is difficult to support, for a licensee has no primary right arising from the trespass. It is submitted that a rule of law is too severe which casts upon the non-negligent owner of cattle a liability for mischief that could not have been anticipated. *Klenberg* v. *Russell*, 125 Ind. 531.

APPEAL AND ERROR — DETERMINATION AND DISPOSITION OF CAUSE — DECISION BY DIVIDED COURT. — On appeal from the judgment of a trial court, admitting a will to probate, three judges voted to affirm; four were for granting a new trial, — one on the ground of undue influence, one on the ground of testamentary capacity, and two on both grounds. There was not a majority for reversal on any one ground. *Held*, that the judgment must be affirmed. *In re McNaughton's Will*, 118 N. W. 997 (Wis.).

In the absence of statutory or constitutional modifications, it is well settled that the decision of a majority of the judges sitting in an appellate court is conclusive. *Gibbons* v. *Ogden*, 5 N. J. L. 1005. Nor is it necessary that their conclusions be based on the same grounds. *Smith* v. *United States*, 5 Pet. (U. S.) 292, 303. The court in the principal case departs from this rule where